



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:330. Small Owners Tank Removal Account. [~~Small-owners tank removal~~
6 ~~account.~~]

7 RELATES TO: KRS 224.60-105, 224.60-130(1)(a), (b), [(2)(a), (b)], KRS 224.60-140,
8 40 CFR 280 Part H

9 STATUTORY AUTHORITY: KRS 224.60-130(1)(i) [(2)(j)]

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(i) [(2)(j)]
11 requires the establishment of an account to reimburse small owners for the reasonable cost of
12 permanent closure [~~tank system removal. KRS 224.60-130(2)(a) and (b) require the agency to~~
13 ~~promulgate administrative regulations to administer the fund.~~] This administrative regulation
14 establishes the eligibility requirements and rates for [~~the ranges of~~] reimbursement from [~~for~~] the
15 Small Owners Tank Removal Account (SOTRA). [~~small-owners tank removal account.~~]

16 Section 1. Applicability. The provisions of this administrative regulation shall apply to
17 [~~that class of~~] petroleum storage tank owners meeting the requirements of Section 2 of this
18 administrative regulation. [~~previously designated by federal law, 40 C.F.R. 280 Part H, as~~
19 ~~required to remove or upgrade the facility's tanks on or before December 22, 1998.~~]

1 Section 2. Eligibility. (1) To demonstrate eligibility, an owner shall submit a completed
2 “SOTRA Application for Assistance”, DEP 6067 (January 2006). An owner shall be eligible for
3 reimbursement from this account if:

4 (a) [(4)] The petroleum storage tank owner demonstrates full or partial interest in ten
5 (10) or fewer tanks, and meets the financial eligibility criteria listed on the “SOTRA Application
6 for Assistance”, DEP 6067 (January 2006);

7 [is:

8 ~~(a) An individual who:~~

9 1. ~~Has a five (5) year average adjusted gross income of \$50,000 or less; and~~

10 2. ~~Owens full or partial interest in ten (10) or fewer tanks;~~

11 ~~(b) A partnership that:~~

12 1. ~~Has a five (5) year average adjusted gross income of \$50,000 or less; and~~

13 2. ~~The members of the partnership own full or partial interest in a total of ten (10) or~~
14 ~~fewer tanks;~~

15 ~~(c) A corporation:~~

16 1. ~~Has a five (5) year average total income of less than \$50,000; and~~

17 2. ~~The shareholders of the corporation own full or partial interest in a total of ten (10) or~~
18 ~~fewer tanks; or~~

19 ~~(d) A nonprofit corporation; and~~

20 ~~(2) For an owner who is not a nonprofit corporation:]~~

21 (b) [(a)] The tanks are located on a facility that is or was involved in the retail sale or
22 wholesale distribution of motor fuel;

1 (c) ~~[(b)]~~ The tanks are registered with the Division of Waste Management, pursuant to
2 KRS 224.60-105 and 401 KAR 42:020;

3 (d) ~~[(e)]~~ The owner certifies that:

4 1. The retail sale or wholesale distribution of motor fuel at the facility will permanently
5 cease upon permanent closure ~~[removal]~~ of the tanks; and

6 2. All known tanks at the facility are being removed or closed in place; and

7 (e) ~~[(d)]~~ The owner has owned the tanks for more than one (1) year prior to the date of
8 the application for reimbursement from this account.

9 (2) ~~[(3)]~~ A newly discovered underground storage tank system ~~[The discovery of a~~
10 ~~previously unknown or abandoned tank]~~ shall not affect the eligibility of an otherwise eligible
11 owner.

12 (3) ~~[(4)]~~ A tank need not be in operation prior to its removal.

13 (4) A written notice shall be submitted to the applicable regional office at least fourteen
14 (14) calendar days prior to commencement of the permanent closure of the petroleum storage
15 tank to maintain eligibility for reimbursement.

16 (5) Federal and state owned facilities shall not be eligible for reimbursement from the
17 Small Owners Tank Removal Account.

18 Section 3. Account Use. (1) Funds in this account shall be used to reimburse eligible
19 petroleum storage tank owners for those reasonable and necessary costs incurred through
20 performance of actions required in 401 KAR 42:070. ~~[for reimbursing the reasonable and~~
21 ~~necessary cost of:~~

22 (a) ~~Removal and disposal of petroleum storage tanks containing motor fuel;~~

23 (b) ~~Disposal of contaminated backfill or contaminated water if required by law; and~~

1 ~~(c) Post removal or confirmation sampling required by the Division of Waste~~
2 ~~Management;]~~

3 (2) The use of this account shall be limited as specified in KRS 224.60-130(1)(j).

4 (3)(a) ~~The~~ [If contamination requiring corrective action is found by analytical sample,
5 ~~the~~] owner of a facility shall be eligible for reimbursement of the cost of permanent closure [tank
6 ~~system removal~~], but shall not be eligible for payment of corrective action cost from this
7 account.

8 (b) If corrective action is required, eligible reimbursement shall be governed by 401 KAR
9 42:250. ~~[If the office receives a notice from the cabinet requiring corrective action at the facility,~~
10 ~~the owner shall be reimbursed for tank system removal and his documents then transferred for~~
11 ~~review under the financial responsibility account, 401 KAR 42:260, or the petroleum storage~~
12 ~~tank account, 401 KAR 42:270.]~~

13 (4)(a) If expenditures from this account exceed \$3,000,000 during any fiscal year, the
14 cabinet may suspend further reimbursements from this account. The suspension shall be in effect
15 until the cabinet determines that further reimbursements from this account will not threaten the
16 solvency of the Petroleum Storage Tank Environmental Assurance Fund.

17 (b) This determination shall be based upon legislatively enacted budgets and associated
18 appropriations.

19 ~~[(4) If a release requiring corrective action is confirmed from a tank system eligible for~~
20 ~~participation in this account, and the owner has interest in five (5) or fewer tanks, the eligible~~
21 ~~corrective action cost may be reimbursed from the cabinet's financial responsibility account, 401~~
22 ~~KAR 42:260, or the petroleum storage tank account, 401 KAR 42:270, to be ranked pursuant to~~
23 ~~401 KAR 42:290. To qualify, the owner shall file an application for assistance in accordance~~

1 with ~~401 KAR 42:280~~ and shall adhere to the requirements of ~~401 KAR 42:280, 401 KAR~~
2 ~~42:310 and 401 KAR 42:314.~~

3 ~~(5) If a release requiring corrective action is confirmed from a tank system eligible for~~
4 ~~participation in this account, and the owner has interest in six (6) to ten (10) tanks, the eligible~~
5 ~~corrective action cost may be reimbursed from the cabinet's financial responsibility account, 401~~
6 ~~KAR 42:260, or the petroleum storage tank account, 401 KAR 42:270, ranked for priority in~~
7 ~~accordance with 401 KAR 42:290, Section 1(1)(b) or 401 KAR 42:290(6). To qualify, the owner~~
8 ~~shall file an application for assistance in accordance with 401 KAR 42:280 and shall adhere to~~
9 ~~the requirements of 401 KAR 42:280, 401 KAR 42:310 and 401 KAR 42:314.~~

10 ~~(6)(a) If obligations from this account exceed \$3,000,000 during any fiscal year, the~~
11 ~~secretary may suspend further obligations from this account. The suspension shall be in effect~~
12 ~~until the secretary determines that further obligations from this account will not threaten the~~
13 ~~solvency of the fund.~~

14 ~~(b) This determination shall be based upon:~~

15 ~~1. Fund receipts and expenditures;~~

16 ~~2. Audit reports;~~

17 ~~3. Actuarial studies;~~

18 ~~4. Projected revenue; and~~

19 ~~5. Projections on the number of tanks to be removed.~~

20 ~~(7) Obligations from this account shall cease on June 30, 2002.]~~

21 Section 4. Application Procedure. (1) The owner shall file a completed "Application for
22 Assistance", DEP 6063 (January 2006), incorporated by reference in 401 KAR 42:250,
23 [Application for Tank Removal Assistance form] for participation in this account at least forty-

1 five (45) days prior to the permanent closure ~~[removal]~~ of the tank or tanks. The owner shall also
2 provide the following information:

3 (a) Verification of income level by copies of the previous five (5) years' income tax
4 returns;

5 ~~[(b) A copy of the Notice of Intent to Permanently Close Underground Tank System,~~
6 ~~filed with the cabinet;~~

7 ~~(c) Proof of tank registration with the cabinet;]~~

8 (b) [(d)] A copy of the contract with a tank remover who has been certified ~~[approved]~~ by
9 the State Fire Marshal;

10 (c) [(e)] A site map delineating the facility boundaries and the location of all tank pits and
11 areas to be impacted by the permanent closure ~~[removal]~~; and

12 (d) [(f)] Color photographs of the facility and the areas to be impacted by the permanent
13 closure. ~~[tank removal.]~~

14 (2)(a) Within 120 days of the receipt of a completed application, the cabinet shall issue a
15 letter ~~[notifying the owner]~~ setting forth the owner's eligibility status and the availability of
16 funding for the closure of the petroleum storage tank. ~~[that:~~

17 ~~1. He is eligible and stating the amount obligated for removal;~~

18 ~~2. He is eligible but that no funds are available for the remaining fiscal year; or~~

19 ~~3. The facility is not eligible for participation in this account.]~~

20 (b) Permanent closure ~~[Removal]~~ of the tank system shall not begin until the cabinet has
21 approved the application and established the reimbursable amount. ~~[an obligation.]~~ Failure to
22 comply with this requirement shall result in denial of the reimbursement.

Section 5. Permanent Closure ~~[Removal]~~ Costs. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars per gallon of tank capacity ~~[removed]~~ or the following table:

Number of Tanks in Pit	Size of Largest Tank in Pit (gallons)			
	3,100 or less	3,101 to 5,100	5,101 to 10,000	Greater Than 10,000
1	\$3,000	\$3,400	\$4,900	\$5,400
2	\$4,900	\$5,500	\$7,400	\$8,600
3	\$6,400	\$7,500	\$9,700	\$11,800
4	\$7,900	\$9,000	\$11,800	\$14,000
5	\$9,400	\$10,500	\$13,800	\$16,900
Each Extra Tank (up to 10)	\$1,500	\$1,500	\$1,800	\$2,200

(b) In addition to the cost listed in subsection (1)(a) of this section ~~[above]~~, the cabinet shall reimburse a one (1) time amount of ~~[, which shall not exceed]~~ \$2,000 for the preparation and submission of a Closure Assessment Report. This shall include the cost of preparing a ~~[facility]~~ classification guide. ~~[guide, if required by the cabinet.]~~ The cabinet shall also reimburse a one (1) time amount of \$350 for the mobilization and demobilization of equipment.

(c) If more than one (1) tank pit is located on a facility, the reimbursement shall be calculated by adding the matrix value given for each pit, plus an amount allowed by subsection (3) of this section.

(2) The following costs shall be included in the cost listed in subsection (1)(a) of this section:

(a) Tank system removal, cleaning and disposal;

1 (b) Permanent closure ~~[Removal]~~ of twenty-five (25) feet of associated piping outside of
2 the tank pit;

3 (c) Removal of the pump island and canopy;

4 (d) Drumming and disposal of cleaning material;

5 (e) Backfilling to return the excavation to grade. Additional backfill material may be
6 reimbursed in accordance with subsection (3) of this section;

7 (f) Concrete or asphalt surface removal;

8 (g) Equipment and material necessary for the permanent closure ~~[removal and closure of~~
9 ~~a tank system]~~;

10 (h) Preparation of a permit if required for permanent closure or testing of a tank system
11 ~~[removal or testing]~~;

12 (i) Excavation and loading of material;

13 (j) Collection of samples; and

14 (k) Labor charges relating to paragraphs (a) through (j) of this subsection.

15 (3) The costs of the following items, if necessary, will be added to the cost established in
16 subsection (1)(a) subject to the ranges set forth in the "Contractor Cost Outline" (January 2006),
17 incorporated by reference in 401 KAR 42:250: ~~[The following items are not included in the cost~~
18 ~~matrix in subsection (1)(a) of this section. The cost cost, including labor, of these items, if~~
19 ~~reasonable, may be added to the matrix value if necessary to achieve closure:]~~

20 (a) Surface replacement;

21 (b) Transportation, disposal and replacement of contaminated backfill;

22 (c) Disposal of asphalt surface material;

(d) Installation of up to three (3) monitoring wells, as required by 401 KAR 42:070. ~~[to the extent required by law.]~~ The cost of additional wells may be allowed if the additional wells are required in writing by the cabinet. An additional lump sum of \$500 shall be allowed for planning and reporting of the well installation and sampling;

(e) Disposal or recycling of tank content or waste;

(f) Removal, transportation and off-site disposal of water, if required ~~[by law]; [and]~~

(g) Laboratory analysis, to the extent required; and ~~[by law.]~~

(h) Optional soil removal outside of the excavation zone in accordance with Section 2.7 of the "Closure Outline" (January 2006), incorporated by reference in 401 KAR 42:070.

~~[(4) Costs in this section shall be subject to the ranges set forth in 415 KAR 1:110.]~~

Section 6. Claims. (1) To receive reimbursement, an ~~[An]~~ owner shall submit a completed "SOTRA Claim Request", DEP 6068 (January 2006). ~~[Claim Payment Request for Tank Removal form at the time he receives a notice from the cabinet that:~~

~~(a) No further action is necessary; or~~

~~(b) Corrective action is required.]~~

(2) In addition to the completed claim form, the owner shall submit the required documentation in accordance with the "Contractor Cost Outline" (January 2006), as incorporated by reference in 401 KAR 42:250. ~~[following in support of the request:~~

~~(a) The Closure Assessment Report;~~

~~(b) Original invoices in support of costs claimed under Section 5(3) of this administrative regulation; and~~

~~(c) A copy of the notice in subsection (1) of this section.]~~

(3) The cabinet shall review a claim request for the following:

1 (a) The number and size of tanks removed; and

2 (b) Verification of eligible costs. [~~proper costs from Section 5(2) of this administrative~~
3 ~~regulation; and~~

4 (~~e) The necessity and reasonableness of costs claimed under Section 5(3) of this~~
5 ~~administrative regulation.~~]

6 (4) To receive reimbursement, an owner must have paid all annual tank fees as required
7 by KRS 224.60-150.

8 (5) The cabinet may [~~shall~~] request additional supporting documentation [~~if necessary~~] to
9 verify the reasonableness or necessity of a cost.

10 (6) Reimbursement is contingent upon a determination by the cabinet that the report
11 required is complete and meets the requirements of 401 KAR Chapter 42.

12 [~~(5) If circumstances necessitate the closure in place of a tank, rather than its removal, the~~
13 ~~cost incurred may be reimbursed. The owners bears the burden of showing the necessity and cost~~
14 ~~effectiveness of closure in place verses tank removal.~~]

15 Section 7. Incorporation by Reference. (1) The following material is incorporated by
16 reference:

17 (a) "SOTRA Application for Assistance", DEP 6067 (January 2006); and

18 (b) "SOTRA Claim Request", DEP 6068 (January 2006).

19 [~~(a) Application for Tank Removal Assistance (October 1998), Public Protection and~~
20 ~~Regulation Cabinet;~~

21 (~~b) Claim Payment Request for Tank Removal (October 1998), Public Protection and~~
22 ~~Regulation Cabinet.~~]

1 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
2 law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort,
3 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays and may
4 also be obtained on the Division of Waste Management's web page located at
5 www.waste.ky.gov.

401 KAR 42:330 is approved for filing.

4-12-2006

Date

John W. Clay
John W. Clay, Deputy Secretary
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director
Division of Waste Management
14 Reilly Road
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:330

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility requirements and rates for reimbursement from the SOTRA.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the requirements and rates for SOTRA, as described in KRS 224.60-130(1)(d).
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements and rates for SOTRA described in KRS 224.60-130(1)(d).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment reflects the cabinet's reorganization, inserts language that indicates the cabinet can suspend further reimbursements in response to legislatively enacted budgets, and updates the incorporated materials.
- (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reflect the cabinet's reorganization and update the incorporated materials.
- (c) How the amendment conforms to the context of the authorizing statutes: The authorizing statutes do not speak specifically on how the cabinet shall create or reimburse individuals from the Small Owners Tank Removal Account. This amendment alters the language that addresses this information.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment updates information related to SOTRA in order to reflect current practices and procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The above groups may be impacted if there is a loss in funding to SOTRA. This could result in suspension of reimbursements until the cabinet determines that further reimbursements from this account will not threaten the solvency of the fund.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-145.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all eligible owner and operators of petroleum storage tanks. To apply tiering to the amendment would unduly regulate some entities with petroleum storage tanks while not regulating others. However, by statute, the SOTRA is established to inherently recognize the uniqueness of small business owners.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:330

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate USTs.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-130(1) authorizes the cabinet to establish a Small Owners Tank Removal Account.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect

Expenditures (+/-): No effect

Other Explanation: The cabinet expects no significant impact from this administrative regulation.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE IN
401 KAR 42:330**

I. This administrative regulation incorporates by reference the “SOTRA Application for Assistance”, DEP 6067 (January 2006). This document is submitted by a petroleum storage tank owner or operator to apply for the Small Owners Tank Removal Account (SOTRA). This account is the mechanism by which a petroleum storage tank owner or operator can be reimbursed for eligible tank removal costs.

This document consists of 3 pages.

II. This administrative regulation incorporates by reference the “SOTRA Claim Request”, DEP 6068 (January 2006). This document is submitted by a petroleum storage tank owner or operator to seek reimbursement of tank removal costs from the Small Owners Tank Removal Account (SOTRA).

This document consists of 3 pages.